

PUBLIC LAW BOARD No. 3626

AWARD No. 6

Docket No. 6

Case 84-33

**PARTIES TO DISPUTE:**

Southern Pacific Transportation Company  
(Eastern Lines)

and

Brotherhood of Maintenance of Way Employes

STATEMENT OF CLAIM

1. Carrier violated the effective Agreement when Track Welder J.E. Arrington as unjustly suspended from service for five (5) working days effective January 18, 1984 through January 24, 1984.
2. Claimant Arrington shall be paid for 48 hours at his straight time rate of pay, 262 miles at 23 cents per mile, and his personal record be cleared of all charges.

OPINION OF THE BOARD

The Claimant was suspended for five (5) working days for refusing to protect his assignment. He requested a hearing and, subsequent to the hearing, the Carrier affirmed the disciplinary action. The record shows that the Manager testified that on the day in question the Claimant was instructed to work behind the rail gang and the Employee stated that he would not do so because it was "unsafe". He also made reference to another individual whose actions he objected to.

The Employee asserts that his life was in danger and he contends that an individual does not have to perform work under those hazardous conditions since the Carrier has a responsibility to provide a safe working place and to provide safe and responsible supervision.

Certainly, this Board would not affirm any Carrier action which required an Employee to work in a known hazardous condition. However, more is required to establish that factor than a mere contention on the part of the Employee. Rather, the Employee must demonstrate by acceptable and persuasive evidence that, in fact, the environment was unsafe or, at least, that the Employee had a reasonable good faith belief that his life or safety was in jeopardy. No such showing was made here. While the Employee's disciplinary record appears to be quite good we cannot find that a five (5) day disciplinary suspension was arbitrary or capricious under the circumstances and we will deny the claim.

#### FINDINGS

The Board, upon consideration of the entire record and all of the evidence finds:

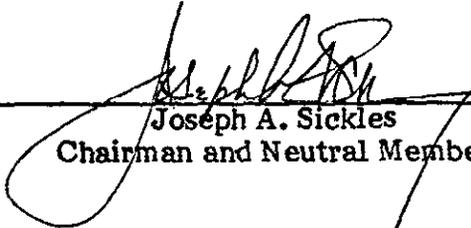
The parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended.

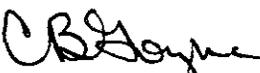
This Board has jurisdiction over the dispute involved herein.

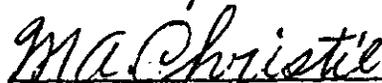
The parties to said dispute were given due and proper notice of hearing thereon.

AWARD

1. Claim denied.

  
\_\_\_\_\_  
Joseph A. Sickles  
Chairman and Neutral Member

  
\_\_\_\_\_  
C. B. Goynes  
Carrier Member

  
\_\_\_\_\_  
M. A. Christie  
Employee Member

10-19-84  
Date